



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 8, 2004

Mr. Jim Duvall
Duvall & Gruning, PLLC
112 North LBJ Drive
San Marcos, Texas 78666

OR2004-10412

Dear Mr. Duvall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 214735.

The City of Buda (the "city"), which you represent, received a request for utility account information related to the Mayor and City Council members. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that certain information has been redacted from the submitted documents. You do not assert, nor has our review of our records indicated, that you have been granted a previous determination to withhold any such information without seeking a ruling from this office. Because we can discern the nature of the information that has been redacted, being deprived of this information does not inhibit our ability to make a ruling *in this instance*. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. See Gov't Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"); Gov't Code §552.302.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information another statute makes

confidential. You raise section 552.101 in conjunction with section 182.052 of the Utility Code, which provides, in relevant part:

(a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer's account record, or any information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage, if the customer requests that the government-operated utility keep the information confidential. However, a government-operated utility may disclose information related to the customer's volume or units of utility usage or amounts billed to or collected from the individual for utility usage if the primary source of water for such utility was a sole-source designated aquifer.

Util. Code § 182.052(a). Water service is included in the scope of utility services covered by section 182.052. Util. Code § 182.051(3). Section 182.054 of the Utilities Code provides six exceptions to the disclosure prohibition found in section 182.052. *See id.* § 182.054. You have provided no information to allow us to conclude that these exceptions apply in this instance.

The submitted information consists of billing information pertaining to individual customers' volume or units of utility consumption and amounts billed to or collected for usage. You state, and provide documentation showing, that the individuals to whom the submitted billing information pertains have timely elected to keep their public utility information confidential under section 182.052(a) of the Utilities Code. However, section 182.052(a) provides that the utility may disclose a customer's billing information, notwithstanding the customer's request for confidentiality, if the primary source of water for such utility is a sole-source designated aquifer. You state that the primary source of water for the city's utility is Edwards Aquifer. You state, however, that "[i]t is the policy of the [c]ity to respect the request for confidentiality when requested to do so by its customers." Accordingly, we conclude that the city may withhold the submitted information under section 552.101 in conjunction with section 182.052 of the Utilities Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 214735

Enc. Submitted documents

c: Ms. Joyce H. Poer
P.O. Box 525
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(w/o enclosures)